HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

And
HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

W.A.NO.1766 OF 2005

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Between:

M/s.Bharat Petroleum Corporation Limited,

Vijayawada Retail Territory,

Labbipet, Vijayawada,

Represented by its Territory Manager and another.

.....Appellants

AND

Smt.O.Hima Bindu

.....Respondent

::JUDGMENT::

Counsel for the Appellants : Sri O.Manoher Reddy
Counsel for the Respondent : Sri G.Vidyasagar

Dated 03/4/2006

Per Sri G.S.Singhvi, CJ

This is an appeal for setting aside order dated 20.8.2005 passed by the learned Single Judge in Writ Petition No.8371 of 2003, whereby he directed the non-petitioners (appellants herein) to handover vacant possession of the land forming part of Survey No.145/2, Piler Town, Chittoor District and also pay arrears of rent with effect from 10.5.1999.

A perusal of the record show that 5500 square yards of land comprised in Survey No.145/2 of Piler Town was leased out by it's owner Sri C. Ramaswami Reddy to

Burmah Shell Oil Storage and Distributing Company of India Limited (predecessor of appellant No.1) on 1-11-1963 for setting up a retail outlet of petroleum products. The lease deed was executed on 6.10.1964. The tenure of the lease was for 30 years. During the currency of lease, Sri C. Ramaswami Reddy, vide his letter dated 30-6-1993, informed Divisional Manager of appellant No.1 that he had given the land to his granddaughter C. Nirupama and executed Power of Attorney in favour of her husband Sri C.V. Mahesh Reddy. He asked the officer concerned that future correspondence should be made with Sri C.V. Mahesh Reddy. On receipt of that communication, the concerned authority of appellant No.1 sent letter dated 27-7-1993 requiring the addressee to furnish transfer deed and Power of Attorney. After about three months, the appellants filed a suit for declaration in the Court of Senior Civil Judge, Piler. An application for injunction was also filed with the prayer that the defendants be restrained from evicting them. The suit filed by the appellants was registered as O.S.No.331 of 2006. At one stage, the trial court passed an order of injunction, but the same was vacated on 2.5.1998. The suit was ultimately dismissed in default on 21.8.2000.

In the meanwhile, Smt. Nirupama sold the land to Smt. O. Shivalingamma, who, in turn, executed registered gift deed dated 9.7.1999 in favour of the writ petitioner (respondent herein). After four years, the respondent filed writ petition under Article 226 of the Constitution of India for issuance of a direction to the non-petitioners (appellants herein) to handover vacant possession of the property by asserting that tenure of the lease had come to an end on 30.10.1993.

In the counter filed on behalf of the appellants, it was averred that appellant No.1 had exercised option for renewal of lease by sending communication dated 14.6.1993 and, therefore, in terms of Section 5 read with Section 7(3) of the Burma-Shell (Acquisition of undertakings in India) Act, 1976 (for short 'the Act'), the lease will be deemed to have been renewed for a further period of thirty years.

On a consideration of the pleadings of the parties, the learned Single Judge held that communication dated 14.6.1993 sent by the appellants cannot be treated as unequivocal desire for renewal of the lease, which stood expired on 1.11.1993. The learned Single Judge then relied on the judgment of the Supreme Court in **Hindustan Petroleum Corporation Limited vs. Dollydas** and directed the appellants to handover vacant possession of the site to the writ petitioner. For the

sake of convenient reference, paragraphs 11 and 12 of the order of the learned Single Judge are reproduced below:

> "11. The main objection raised on behalf of the respondents is to the effect that in terms of the provisions of the aforesaid Act, they exercised their option by way of application on 14-6-1993 itself expressing their desire to renew the lease, which was being denied by the petitioner. It was clarified in the reply affidavit that the application of the respondent does not make any cause of action as such. In reply thereto, the previous owner had informed about the transfer of the title in favour of the petitioner. Yet, there is no further due option in between the parties, i.e., the respondents and the petitioner as such. Admittedly, on a reading of the entire pleadings from both sides, there is nothing to show that there was any renewal, inter parties, between the respondent company and the petitioner. The lease period stood expired on 1-11-1993 and there is absolutely no valid explanation forthcoming for the dismissal of the suit filed by the respondents themselves. In fact, the said suit was filed for the very same claim for renewal of the lease, wherein interim injunction obtained was vacated and ultimately the suit was dismissed. The decree in the said suit has become final. There is no further appeal carried by the respondent company. Having regard to such staring decree, though it was dismissal for default, there being no positive act of renewal as such, the respondents cannot take any shelter under the provisions of the aforesaid Act and claim renewal.
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> 12. In **Hindustan Petroleum Corporation Limited v. Dollydas** (1 supra) having held that there was no proper renewal, it was held that appropriate relief can be granted under Article 226 of the Constitution of India. There is no serious dispute on the aforesaid aspect. In view of the same, it was further held therein that directions could be given not only for payment of rent, but also for handing over possession. In these circumstances, it has to be held that the petitioner is entitled to possession of the aforesaid property. Accordingly, following the said directions, the writ petition is allowed as prayed for. The respondents shall hand over the vacant possession of the premises to the petitioner within a period of one month from today and shall also pay the entire arrears with effect from 10-5-1999 within the same period of one month from today."

Sri O.Manoher Reddy, learned counsel for the appellants assailed the order under

challenge by arguing that the direction given by the learned Single Judge to his clients to handover vacant possession of the premises to the respondent is legally unsustainable. He submitted that failure of the learned Single Judge to consider the appellants' plea regarding automatic renewal of lease has caused grave injustice to his clients. He relied on the judgment of the three Judges Bench of the Supreme Court in **Bharat Petroleum Corporation Limited vs. K.Kesavan** and argued that once appellant No.1 exercised option for renewal of lease, the same will be deemed to have been renewed by virtue of Section 5(2) read with Section 7(3) of the Act. Sri Reddy submitted that this point was specifically urged before the learned Single Judge but the same has not been considered.

Sri G. Vidyasagar, learned counsel for the respondent fairly admitted that the appellants had raised the plea of automatic renewal of lease, but the same has not been considered by the learned Single Judge.

We have considered the respective submissions/arguments and are convinced that the order under challenge is liable to be set aside. In the counter-affidavit filed on behalf of the appellants, it was specifically pleaded that appellant No.1 had opted for renewal of lease for a further period of thirty years commencing from 1.11.1993 and the lease will be deemed to have been renewed by operation of law. The learned Single Judge did take notice of this assertion, but did not deal with the appellants' entitlement to the renewal of lease. In our opinion, failure of the learned Single Judge to deal with and decide the question whether the lease of the property will be deemed to have been renewed has the effect of vitiating the impugned order. If the learned Single Judge was to accept the appellants' plea that the lease will be deemed to have been renewed in terms of Section 5 read with Section 7(3) of the Act, then there could be no occasion for ordering eviction of the appellants. However, the fact of the matter is that the learned Single Judge omitted to consider this all important issue and that, as mentioned above, has resulted in failure of justice.

We would have ourselves dealt with and decided the issue relating to applicability of Sections 5 and 7(3) of the Act to the case of the appellants but refrain from doing so because adjudication by the Division Bench would deprive either of the parties of their legitimate right to appeal against the order, which may be passed by the learned Single Judge.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside with the direction that writ petition filed by the respondent be listed before the Single Bench on 06-06-2006, as per roster, for fresh adjudication.

We hope that the learned Single Judge will, keeping in view the urgency of the issue raised by the petitioner, accept the prayer, if any, made for early hearing of the writ petition.

While disposing of the appeal in the manner indicated above, we deem it proper to make it clear that the appellants shall continue to pay the rent including the enhanced rent, if any, in terms of the direction given by the Division Bench and if they fail to do so, the respondent shall be entitled to bring this fact to the notice of the learned Single Judge.

G.S.SINGHVI, CJ

Dt.3/4/2006

G.BHAVANI PRASAD,J

Msv / svs/vtv